



New South Wales

# **Lithgow City Local Environmental Plan 1994 (Amendment No 12)**

under the

**Environmental Planning and Assessment Act 1979**

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (D06/00005/PC)

KRISTINA KENEALLY, M.P.,  
Minister for Planning

## 2008 No 502

Clause 1 Lithgow City Local Environmental Plan 1994 (Amendment No 12)

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### **Lithgow City Local Environmental Plan 1994 (Amendment No 12)**

under the

Environmental Planning and Assessment Act 1979

#### **1 Name of plan**

This plan is *Lithgow City Local Environmental Plan 1994 (Amendment No 12)*.

#### **2 Aims of plan**

This plan amends *Lithgow City Local Environmental Plan 1994*:

- (a) to provide interim planning controls for the City of Lithgow following the transfer to the City of certain land that was in the former local government area of Evans, and
- (b) to control the location of home occupation (sex services) premises, restricted premises and sex services premises in the City of Lithgow.

#### **3 Land to which plan applies**

This plan applies:

- (a) in so far as it provides interim planning controls as referred to in clause 2 (a), to land situated in the City of Lithgow that was in the former local government area of Evans, as shown edged heavy black and lettered “1 (e)” on Sheet 1 of the map marked “Lithgow City Local Environmental Plan 1994 (Amendment No 12)” deposited in the office of the Council of the City of Lithgow, and
- (b) in so far as it controls the location of premises as referred to in clause 2 (b), to all land situated in the City of Lithgow.

#### **4 Amendment of Lithgow City Local Environmental Plan 1994**

*Lithgow City Local Environmental Plan 1994* is amended as set out in Schedule 1.

#### **5 Repeal of Interim Development Order No 1—Shire of Evans**

*Interim Development Order No 1—Shire of Evans* is repealed.

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## Schedule 1 Amendments

(Clause 4)

**[1] Clause 5 Adoption of Model Provisions**

Omit “except for the definition of *arterial road, map, residential flat building* and *rural worker’s dwelling*”.

Insert instead “except for the definitions of *agriculture, arterial road, child care centre, church, educational establishment, map, recreation facility, residential flat building* and *rural worker’s dwelling*”.

**[2] Clause 6 Definitions**

Omit the definition of *home based child care* from clause 6 (1).

**[3] Clause 6 (1)**

Insert in alphabetical order:

*brothel* has the same meaning as in the Act.

*building* has the same meaning as in the Act.

**Note.** The term is defined to include part of a building and any structure or part of a structure, but not including a manufactured home, a moveable dwelling or associated structure (or part of a manufactured home, moveable dwelling or associated structure).

*child care centre* means a building or place used for the supervision and care of children that:

- (a) provides long day care, pre-school care, occasional child care or out-of-school-hours care, and
- (b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre,

but does not include:

- (c) a building or place used for home-based child care, or
- (d) an out-of-home care service provided by an agency or organisation accredited by the NSW Office of the Children’s Guardian, or
- (e) a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
- (f) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or

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- (g) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility, or
- (h) a service that is concerned primarily with the provision of:
  - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
  - (ii) private tutoring, or
- (i) a school, or
- (j) a service provided at exempt premises (within the meaning of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.

**entertainment facility** means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub, nightclub or registered club.

**home-based child care** means a dwelling used by a resident of the dwelling for the supervision and care of one or more children and that satisfies the following conditions:

- (a) the service is appropriately licensed within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) the number of children (including children related to the carer or licensee) does not at any one time exceed 7 children under the age of 12 years, including no more than 5 who do not ordinarily attend school.

**home business** means a business carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (a) the employment of more than 2 persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or

- (d) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the business carried on in the dwelling), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,

but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.

**home occupation (sex services)** means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve:

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or
- (c) the exhibition of any notice, advertisement or sign, or
- (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include a home business or sex services premises.

**hotel or motel accommodation** means tourist and visitor accommodation (whether or not licensed premises under the *Liquor Act 1982*):

- (a) comprising rooms or self-contained suites, and
- (b) that may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

**nightclub** means premises specified in a nightclub licence under the *Liquor Act 1982*.

**place of public worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

**pub** means licensed premises under the *Liquor Act 1982* the principal purpose of which is the sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold on the premises.

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**recreation facility (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

**recreation facility (major)** means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes sports stadiums, showgrounds, racecourses and motor racing tracks.

**recreation facility (outdoor)** means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

**registered club** means a club in respect of which a certificate of registration under the *Registered Clubs Act 1976* is in force.

**restricted premises** means business premises or retail premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include hotel or motel accommodation, a pub, home occupation (sex services) or sex services premises.

**school** means a government school or non-government school within the meaning of the *Education Act 1990*.

**sex services** means sexual acts or sexual services in exchange for payment.

**sex services premises** means a brothel, but does not include home occupation (sex services).

**[4] Clause 6 (1), definition of “the Map”**

Insert in appropriate order:

Lithgow City Local Environmental Plan 1994 (Amendment No 12)—  
Sheet 1

**[5] Clause 8 Zones shown on the map**

Insert “Zone No 1 (e)—Outer Rural” in appropriate order in the list of zones.

**[6] Clause 9 Zone objectives and development control**

Omit “home based” from item 2 of the matter relating to Zone No 1 (a) Rural (General).

Insert instead “home-based”.

**[7] Clause 9**

Omit item 4 of the matter relating to Zone No 1 (a) Rural (General).

Insert instead:

**4 Prohibited**

Development for the purpose of boarding houses; bulky goods salesrooms or showrooms; commercial premises; home occupation (sex services); motor showrooms; residential units; restricted premises; sex services premises; shops (other than general stores).

**[8] Clause 9**

Omit item 4 of the matter relating to Zone No 1 (c) Rural (Small holdings).

Insert instead:

**4 Prohibited**

Development for the purpose of abattoirs; animal boarding or training establishments; bulk stores; car repair stations; commercial premises; extractive industries; home occupation (sex services); industries (other than home industries and light industries); intensive livestock keeping establishments; junk yards; motor showrooms; offensive or hazardous industries; residential units; restricted premises; sex services premises; shops (other than general stores).

**[9] Clause 9**

Omit “home based” from item 2 of the matter relating to Zone No 1 (d) Rural (Future urban).

Insert instead “home-based”.

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### [10] Clause 9

Omit item 4 of the matter relating to Zone No 1 (d) Rural (Future urban).

Insert instead:

#### 4 Prohibited

Development for the purpose of abattoirs; animal boarding or training establishments; bulk stores; car repair stations; commercial premises; extractive industries; home occupation (sex services); intensive livestock keeping establishments; junk yards; mines; motor showrooms; offensive or hazardous industries; residential units; restricted premises; sex services premises; shops.

### [11] Clause 9

Insert after the matter relating to Zone No 1 (d) Rural (Future urban):

#### Zone No 1 (e) Outer Rural

##### 1 Objectives of the zone

The objective of this zone is to promote the proper management and utilisation of resources by:

- (a) protecting, enhancing and conserving:
  - (i) agricultural land in a manner that sustains its efficient and effective agricultural production potential, and
  - (ii) soil stability, by controlling and locating development in accordance with land capability, and
  - (iii) forests of existing and potential commercial value for timber production, and
  - (iv) valuable deposits of minerals, coal, petroleum and extractive materials, by controlling the location of development in order to ensure the efficient extraction of those deposits, and
  - (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is likely to control land degradation or is significant to scenic amenity or the natural wildlife habitat, and
  - (vi) water resources, including groundwater, for use in the public interest, by preventing the pollution of water supply catchments and water storage, and



- (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitats, and
- (viii) items of archaeological or heritage significance, including Aboriginal relics and places, and
- (b) preventing unjustified development of prime crop and pasture land otherwise than for the purpose of agriculture, and
- (c) facilitating farm adjustments, and
- (d) minimising the cost to the community of:
  - (i) fragmented and isolated development of rural land, and
  - (ii) providing, extending and maintaining public amenities and services, and
- (e) providing land for non-agricultural purposes, in accordance with the need for that development, and
- (f) providing for the separation of conflicting land uses.

**2 Without development consent**

Development for the purpose of agriculture (other than intensive livestock keeping establishments or ancillary dwellings); bushfire hazard reduction; forestry (other than ancillary dwellings); home-based child care.

**3 Only with development consent**

Any development except that permitted without consent or prohibited.

**4 Prohibited**

Development for the purpose of boarding-houses; bulky goods salesrooms or showrooms; commercial premises; home occupation (sex services); motor showrooms; residential units; restricted premises; sex services premises; shops (other than general stores).

**[12] Clause 9**

Omit “home based” from item 2 of the matter relating to Zone No 2 (a) Residential.

Insert instead “home-based”.

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### [13] Clause 9

Omit item 4 of the matter relating to Zone No 2 (a) Residential.

Insert instead:

#### 4 Prohibited

Development for the purpose of abattoirs; animal boarding or training establishments; bulk stores; extractive industries; forestry; generating works; heliports; home occupation (sex services); industries (other than home or light industries); intensive livestock keeping establishments; junk yards; liquid fuel depots; mines; motor showrooms; offensive or hazardous industries; restricted premises; sawmills; sex services premises; shops (other than general stores); stock and sale yards; timber yards; transport terminals; veterinary clinics; warehouses.

### [14] Clause 9

Omit item 4 of the matter relating to Zone No 2 (v) Village. Insert instead:

#### 4 Prohibited

Development for the purpose of extractive industries; home occupation (sex services); intensive livestock keeping establishments; junk yards; mines; offensive or hazardous industries; sex services premises.

### [15] Clause 9

Omit item 4 of the matter relating to Zone No 3 Business. Insert instead:

#### 4 Prohibited

Development for the purpose of abattoirs; animal boarding or training establishments; extractive industries; forestry; generating works; heliports; home occupation (sex services); industries (other than home or light industries); intensive livestock keeping establishments; junk yards; liquid fuel depots; mines; offensive or hazardous industries; sawmills; sex services premises; stock and sale yards; transport terminals; warehouses.

### [16] Clause 9

Omit item 3 of the matter relating to Zone No 4 Industrial. Insert instead:

#### 3 Only with development consent

Development for the purpose of bulky goods salesrooms or showrooms; commercial premises; home occupation (sex

services); restricted premises; sex services premises; shops operated in conjunction with other development permitted within this zone or which, in the opinion of the Council, primarily serves the daily convenience needs of the workforce in the locality; any other development except that prohibited.

**[17] Clause 11 General considerations for development in rural zones**

Omit “or 1 (c)” from clause 11 (1). Insert instead “, 1 (c) or 1 (e)”.

**[18] Clause 12A**

Insert after clause 12:

**12A Subdivision in Zone No 1 (e)**

The Council must not grant development consent for the subdivision of land within Zone No 1 (e) unless each lot to be created by the subdivision will have an area of at least 100 hectares.

**[19] Clause 13 Subdivision for other purposes in Zone No 1 (a) or 1 (e)**

Insert “or 1 (e)” after “1 (a)” in clause 13 (1).

**[20] Clause 18A**

Insert after clause 18:

**18A Erection of a dwelling in Zone No 1 (e)**

The Council must not consent to the erection of a dwelling on vacant land within Zone No 1 (e) unless the land has an area of at least 100 hectares.

**[21] Clause 19 Dual occupancy development**

Omit “Zone Nos 1 (a), 1 (d) or 1 (c)” from clause 19 (3).

Insert instead “Zone No 1 (a), 1 (c), 1 (d) or 1 (e)”.

**[22] Clause 20 Temporary accommodation for workers in Zone No 1 (a) or 1 (e)**

Insert “or 1 (e)” after “1 (a)”.

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### [23] Clause 44

Insert after clause 43:

#### **44 Home occupation (sex services), restricted premises and sex services premises**

- (1) The Council must not consent to development for the purpose of restricted premises on land within Zone No 3 that is within the Lithgow core business district unless the Council is satisfied that:
  - (a) the premises are not located on the same level as Main Street, Lithgow, and
  - (b) the only way to go up or down to the premises from Main Street, Lithgow, is through a doorway entrance.
- (2) The Council must not consent to development for the purpose of restricted premises on land within Zone No 3 but outside the Lithgow core business district or on land within Zone No 2 (v) unless the Council is satisfied:
  - (a) that the land does not adjoin an arterial road, or
  - (b) that, taking the most direct route along the nearest public roads, the premises are at least 80 metres from:
    - (i) any other restricted premises, and
    - (ii) any child care centre, club, entertainment facility, place of public worship, recreation facility (indoor), recreation facility (major), recreation facility (outdoor) or school.
- (3) The Council must not consent to development for the purpose of home occupation (sex services), restricted premises or sex services premises on land within Zone No 4 unless the Council is satisfied:
  - (a) that the land does not adjoin an arterial road, or
  - (b) that, taking the most direct route along the nearest public roads, the premises are at least 80 metres from:
    - (i) any other home occupation (sex services) premises, restricted premises or sex services premises, and
    - (ii) any child care centre, club, entertainment facility, place of public worship, recreation facility (indoor), recreation facility (major), recreation facility (outdoor) or school.

- (4) In this clause:

**club** means a building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes whether of the same or of a different kind, but does not include a nightclub or registered club.

**Lithgow core business district** means the area in Lithgow surrounding Main Street, between its intersections with Lithgow and Bridge Streets, that is shown hatched on Sheet 2 of the map marked “Lithgow City Local Environmental Plan 1994 (Amendment No 12)”.